

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Oct 06, 2020**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DANIELLE M.,<sup>1</sup>

Plaintiff,

v.

ANDREW M. SAUL, the Commissioner  
of Social Security,

Defendant.

No. 4:20-CV-5029-EFS

**ORDER GRANTING PLAINTIFF'S  
SUMMARY-JUDGMENT MOTION  
AND DENYING DEFENDANT'S  
SUMMARY-JUDGMENT MOTION**

Before the Court are the parties' cross summary-judgment motions.<sup>2</sup>

Plaintiff Danielle M. appeals the denial of benefits by the Administrative Law Judge (ALJ). She alleges the ALJ erred by 1) improperly weighing the medical opinions, including all of the medical opinions that limited Plaintiff to occasional manipulation, 2) discounting Plaintiff's symptom reports, and 3) improperly assessing Plaintiff's residual functional capacity and therefore relying on an

---

<sup>1</sup> To protect the privacy of the social-security Plaintiff, the Court refers to her by first name and last initial or by "Plaintiff." See LCivR 5.2(c).

<sup>2</sup> ECF Nos. 11 & 12.

1 incomplete hypothetical at step five. In contrast, Defendant Commissioner of Social  
 2 Security asks the Court to affirm the ALJ's decision finding Plaintiff not disabled.  
 3 After reviewing the record and relevant authority, the Court grants Plaintiff's  
 4 Motion for Summary Judgment, ECF No. 11, and denies the Commissioner's  
 5 Motion for Summary Judgment, ECF No. 12.

### 6 **I. Five-Step Disability Determination**

7 A five-step sequential evaluation process is used to determine whether an  
 8 adult claimant is disabled.<sup>3</sup> Step one assesses whether the claimant is currently  
 9 engaged in substantial gainful activity.<sup>4</sup> If the claimant is engaged in substantial  
 10 gainful activity, benefits are denied.<sup>5</sup> If not, the disability-evaluation proceeds to  
 11 step two.<sup>6</sup>

12 Step two assesses whether the claimant has a medically severe impairment,  
 13 or combination of impairments, which significantly limits the claimant's physical  
 14 or mental ability to do basic work activities.<sup>7</sup> If the claimant does not, benefits are  
 15 denied.<sup>8</sup>

---

17 <sup>3</sup> 20 C.F.R. § 404.1520(a).

18 <sup>4</sup> *Id.* § 404.1520(a)(4)(i).

19 <sup>5</sup> *Id.* § 404.1520(b).

20 <sup>6</sup> *Id.*

21 <sup>7</sup> *Id.* § 404.1520(a)(4)(ii).

22 <sup>8</sup> *Id.* § 404.1520(c).

1 Step three compares the claimant's impairment(s) to several recognized by  
2 the Commissioner to be so severe as to preclude substantial gainful activity.<sup>9</sup> If an  
3 impairment meets or equals one of the listed impairments, the claimant is  
4 conclusively presumed to be disabled.<sup>10</sup> If an impairment does not, the disability-  
5 evaluation proceeds to step four.

6 Step four assesses whether an impairment prevents the claimant from  
7 performing work she performed in the past by determining the claimant's residual  
8 functional capacity (RFC).<sup>11</sup> If the claimant is able to perform prior work, benefits  
9 are denied.<sup>12</sup> If the claimant cannot perform prior work, the disability-evaluation  
10 proceeds to step five.

11 Step five, the final step, assesses whether the claimant can perform other  
12 substantial gainful work—work that exists in significant numbers in the national  
13 economy—considering the claimant's RFC, age, education, and work experience.<sup>13</sup>  
14 If so, benefits are denied. If not, benefits are granted.<sup>14</sup>

---

17 <sup>9</sup> 20 C.F.R. § 404.1520(a)(4)(iii).

18 <sup>10</sup> *Id.* § 404.1520(d).

19 <sup>11</sup> *Id.* § 404.1520(a)(4)(iv).

20 <sup>12</sup> *Id.*

21 <sup>13</sup> *Id.* § 404.1520(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497-98 (9th Cir. 1984).

22 <sup>14</sup> 20 C.F.R. § 404.1520(g).

1           The claimant has the initial burden of establishing entitlement to disability  
2 benefits under steps one through four.<sup>15</sup> At step five, the burden shifts to the  
3 Commissioner to show that the claimant is not entitled to benefits.<sup>16</sup>

## 4                           **II.     Factual and Procedural Summary**

5           Plaintiff filed a Title II application, alleging a disability onset date of  
6 November 1, 2015.<sup>17</sup> Her claim was denied initially and upon reconsideration.<sup>18</sup> An  
7 administrative hearing was held before Administrative Law Judge Mark Kim.<sup>19</sup>

8           In denying Plaintiff's disability claim, the ALJ made the following findings:

- 9           • Plaintiff met the insured status requirements through December 31,  
10           2020;
- 11           • Step one: Plaintiff had not engaged in substantial gainful activity  
12           since the alleged onset date of November 1, 2015;
- 13           • Step two: Plaintiff had the following medically determinable severe  
14           impairments: panic disorder, anxiety disorder, post-traumatic stress  
15           disorder (PTSD), obesity, restless leg syndrome, carpal tunnel  
16

---

17  
18 <sup>15</sup> *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

19 <sup>16</sup> *Id.*

20 <sup>17</sup> AR 188-89.

21 <sup>18</sup> AR 120-22 & 124-28.

22 <sup>19</sup> AR 43-87.

1 syndrome, and degenerative disc disease of the lumbar and cervical  
2 spine;

- 3 • Step three: Plaintiff did not have an impairment or combination of  
4 impairments that met or medically equaled the severity of one of the  
5 listed impairments;
- 6 • RFC: Plaintiff had the RFC to perform light work with the following  
7 limitations:

8 [Plaintiff] can never climb ladders/ropes/scaffolds, and never  
9 crawl. She can occasionally climb ramps/stairs, stoop and  
10 crouch. She can occasionally reach overhead with the  
11 bilateral upper extremities, and frequently handle, finger  
12 and feel bilaterally. She should avoid concentrated exposure  
13 to extreme cold temperature, excessive vibrations, and  
14 unprotected heights. [She] is limited to simple, routine and  
repetitive tasks with only occasional changes and no fast-  
paced production requirements, such as conveyor belt-type  
work. She is limited to only occasional, superficial contact  
with the general public. She is limited to only occasional  
interaction with coworkers and no tandem tasks.

- 15 • Step four: Plaintiff was not capable of performing past relevant work;  
16 and
- 17 • Step five: considering Plaintiff's RFC, age, education, and work  
18 history, Plaintiff could perform work that existed in significant  
19 numbers in the national economy, such as retail marker, photocopy  
20 machine operator, and router.<sup>20</sup>

---

21  
22 <sup>20</sup> AR 17-41.  
23

1 When assessing the medical-opinion evidence, the ALJ gave:

- 2 • substantial weight to the examining opinion of Dr. William Drenguis,  
3 M.D., except as to his occasional handling and fingering limitation,  
4 which the ALJ rejected in favor of a frequent handling and fingering  
5 limitation;
- 6 • substantial weight to the examining opinion of Dr. Jay Toews, Ed.D.,  
7 except for his opinion that the record did not substantiate PTSD as a  
8 severe medically determinable impairment, to which the ALJ gave  
9 little weight;
- 10 • partial weight to Dr. Nora Marks, Ph.D.'s examining opinion; and
- 11 • little weight to the treating opinions of Dillon Burton, PA-C and  
12 Robert Perkes, D.C., to the reviewing opinions of Dr. Guillermo Rubio,  
13 M.D., Dr. Howard Platter, M.D., John Wolfe, Ph.D., and Diane  
14 Fligstein, Ph.D., and to the treating opinion of Kristine Stoew,  
15 LICSW.<sup>21</sup>

16 The ALJ also found that Plaintiff's medically determinable impairments  
17 could reasonably be expected to cause some of the alleged symptoms, but that her  
18 statements concerning the intensity, persistence, and limiting effects of those  
19

20  
21  
22 

---

<sup>21</sup> AR 30-35.

1 symptoms were not entirely consistent with the medical evidence and other  
2 evidence in the record.<sup>22</sup>

3 Plaintiff requested review of the ALJ's decision by the Appeals Council,  
4 which denied review.<sup>23</sup> Plaintiff timely appealed to this Court.

### 5 **III. Standard of Review**

6 A district court's review of the Commissioner's final decision is limited.<sup>24</sup> The  
7 Commissioner's decision is set aside "only if it is not supported by substantial  
8 evidence or is based on legal error."<sup>25</sup> Substantial evidence is "more than a mere  
9 scintilla but less than a preponderance; it is such relevant evidence as a reasonable  
10 mind might accept as adequate to support a conclusion."<sup>26</sup> Moreover, because it is  
11 the role of the ALJ and not the Court to weigh conflicting evidence, the Court  
12 upholds the ALJ's findings "if they are supported by inferences reasonably drawn  
13 from the record."<sup>27</sup> The Court considers the entire record as a whole.<sup>28</sup>

---

14  
15 <sup>22</sup> AR 27-30.

16 <sup>23</sup> AR 1-6.

17 <sup>24</sup> 42 U.S.C. § 405(g).

18 <sup>25</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

19 <sup>26</sup> *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).

20 <sup>27</sup> *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

21 <sup>28</sup> *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must  
22 consider the entire record as whole, weighing both the evidence that supports and  
23

Further, the Court may not reverse an ALJ decision due to a harmless error.<sup>29</sup> An error is harmless “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”<sup>30</sup> The party appealing the ALJ’s decision generally bears the burden of establishing harm.<sup>31</sup>

#### IV. Analysis

##### A. Medical Opinions: Plaintiff established consequential error.

Plaintiff challenges the ALJ’s assignment of little weight to the opinions of Dr. Drenguis, Dr. Perkes, PA-C Burton, Dr. Rubio, Dr. Platter, and Dr. Marks.

##### 1. Standard

The weighing of medical opinions is dependent upon the nature of the medical relationship, i.e., 1) a treating physician, 2) an examining physician who examines but did not treat the claimant, and 3) a reviewing physician who neither treated nor examined the claimant.<sup>32</sup> Generally, more weight is given to the

---

the evidence that detracts from the Commissioner's conclusion,” not simply the evidence cited by the ALJ or the parties.); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]”).

<sup>29</sup> *Molina*, 674 F.3d at 1111.

<sup>30</sup> *Id.* at 1115 (quotation and citation omitted).

<sup>31</sup> *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

<sup>32</sup> *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).



1 opinion of a treating physician than to an examining physician's opinion and both  
2 treating and examining opinions are to be given more weight than the opinion of a  
3 reviewing physician.<sup>33</sup>

4 When a treating physician's or evaluating physician's opinion is not  
5 contradicted by another physician, it may be rejected only for "clear and  
6 convincing" reasons, and when it is contradicted, it may be rejected for "specific  
7 and legitimate reasons" supported by substantial evidence.<sup>34</sup> A reviewing  
8 physician's opinion may be rejected for specific and legitimate reasons supported by  
9 substantial evidence, and the opinion of an "other" medical source<sup>35</sup> may be  
10 rejected for specific and germane reasons supported by substantial evidence.<sup>36</sup> The  
11  
12  
13

---

14 <sup>33</sup> *Id.*; *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).

15 <sup>34</sup> *Lester*, 81 F.3d at 830.

16 <sup>35</sup> See 20 C.F.R. § 404.1502 (For claims filed before March 27, 2017, acceptable  
17 medical sources are licensed physicians, licensed or certified psychologists, licensed  
18 optometrists, licensed podiatrists, qualified speech-language pathologists, licensed  
19 audiologists, licensed advanced practice registered nurses, and licensed physician  
20 assistants within their scope of practice—all other medical providers are "other"  
21 medical sources.).

22 <sup>36</sup> *Molina*, 674 F.3d at 1111; *Bruce v. Astrue*, 557 F.3d 1113, 1115 (9th Cir. 2009).  
23

1 opinion of a reviewing physician serves as substantial evidence if it is supported by  
2 other independent evidence in the record.<sup>37</sup>

3 2. Dr. Drenguis (occasional-manipulation limitation)

4 On August 16, 2016, Dr. Drenguis conducted a physical evaluation of  
5 Plaintiff and reviewed three clinic notes.<sup>38</sup> Dr. Drenguis diagnosed Plaintiff with  
6 cervical pain, lumbar pain, right hip pain, bilateral carpal tunnel syndrome (right  
7 greater than left), and restless leg syndrome. He opined that Plaintiff could  
8 stand/walk for four hours with normal breaks; sit for four hours with normal  
9 breaks; lift and carry up to twenty pounds occasionally and ten pounds frequently;  
10 occasionally climb, stoop, kneel, crouch, and crawl; frequently reach; and  
11 occasionally handle, finger, and feel.

12 The ALJ gave substantial weight to Dr. Drenguis' opinion that Plaintiff  
13 could work at the light exertional level but discounted his opinion that Plaintiff  
14 could only occasionally handle and finger bilaterally, instead finding that Plaintiff  
15 could frequently handle and finger bilaterally.<sup>39</sup> The ALJ discounted Dr. Drenguis'  
16 handle and finger (manipulation) opinion on the grounds that it was inconsistent  
17 with Dr. Drenguis' findings, the overall medical evidence of record, and Plaintiff's  
18 activities. As discussed below, the Court finds the ALJ's offered reasons for  
19

---

20 <sup>37</sup> *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

21 <sup>38</sup> AR 364-70.

22 <sup>39</sup> AR 31.

1 discounting Dr. Drenguis' occasional-manipulation opinion were not cogent reasons  
2 supported by substantial evidence on this record.

3 First, the ALJ found that Dr. Drenguis' occasional-manipulation opinion was  
4 inconsistent with his observation that Plaintiff had full 5/5 grip strength bilaterally  
5 and demonstrated good finger dexterity during the examination, by making a full  
6 fist, touching her thumb to the tip of each finger, picking up a coin, manipulating a  
7 button, tying a bow, and turning a doorknob.<sup>40</sup> While an ALJ may discount a  
8 medical opinion if it is internally inconsistent with normal observations,<sup>41</sup> the ALJ  
9 may "not succumb to the temptation to play doctor and make their own  
10 independent medical findings."<sup>42</sup> Here, in addition to the above-described  
11 observations, Dr. Drenguis observed Plaintiff to have decreased sensation to  
12 pinprick and light touch in the median nerve distribution of both hands, positive  
13 Tinel's test on the right, and a positive bilateral Phalen's test. In addition to his  
14 observations and testing, Dr. Drenguis reviewed three medical records. The

---

15  
16 <sup>40</sup> AR 31 (citing AR 366).

17 <sup>41</sup> See *Lingenfelter*, 504 F.3d at 1042 (recognizing that a medical opinion is  
18 evaluated as to the amount of relevant evidence that supports the opinion, the  
19 quality of the explanation provided in the opinion, and the consistency of the  
20 medical opinion with the record as a whole); *Orn v. Astrue*, 495 F.3d 625, 631 (9th  
21 Cir. 2007) (same).

22 <sup>42</sup> *Rohan v. Chater*, 98 F.3d 866, 970 (7th Cir. 1996).  
23

1 reviewed medical records include a January 2016 record documenting that  
2 Plaintiff, notwithstanding equal bilateral grip strength, had a positive bilateral  
3 Tinel’s test and therefore was diagnosed with carpal tunnel syndrome and treated  
4 with wrist splints, prednisone, and recommended exercises and stretching.<sup>43</sup>  
5 Another reviewed record references that Plaintiff was pending surgery for her  
6 carpal tunnel.<sup>44</sup> Ultimately, Dr. Drenguis “found bilateral carpal tunnel syndrome,  
7 right greater than left. There is sensory change and positive Tinel’s test bilaterally.  
8 Prognosis is fair” and limited Plaintiff to occasional manipulation.<sup>45</sup>

9 In comparison, the ALJ disagreed with Dr. Drenguis’ interpretation of the  
10 test results, observations, and records, instead finding that Dr. Drenguis’  
11 occasional-manipulation opinion was inconsistent with his findings. But the ALJ  
12 cited no medical opinion or authority to support his lay surmise about the  
13 significance of Plaintiff’s full grip strength and ability to engage in the cited single-  
14 occasion manipulation skills, particularly when Dr. Drenguis was aware of the full  
15 grip strength and single-occasion manipulation skills, but instead relied on his  
16

---

17  
18 <sup>43</sup> AR 351-52.

19 <sup>44</sup> AR 323. The third record pertained to Plaintiff’s treatment for restless legs  
20 syndrome and PTSD. AR 377-80 & 364 (stating “[c]linic note dated 06/16/2016  
21 discusses restless leg syndrome and carpal tunnel syndrome”).

22 <sup>45</sup> AR 368.  
23

1 testing and prior test results. On this record, the ALJ failed to support his  
2 inconsistent-with-medical-findings reason with substantial evidence.

3 The ALJ also discounted Dr. Drenguis' occasional-manipulation opinion on  
4 the grounds that it was inconsistent with the overall medical evidence of record.<sup>46</sup>  
5 Whether a medical opinion is consistent with the longitudinal record is a factor for  
6 the ALJ to consider.<sup>47</sup> Here, in this portion of the ALJ's decision, the ALJ did not  
7 cite any evidence supporting his statement that Dr. Drenguis' occasional-  
8 manipulation opinion was inconsistent with the overall medical evidence of  
9 record.<sup>48</sup> However, in an earlier portion of his decision, the ALJ stated that  
10 Plaintiff's "neuromuscular findings have otherwise indicated no focal  
11 neurologic/motor/sensory deficits," and the ALJ also commented on Plaintiff's  
12 minimal, conservative treatment.<sup>49</sup> As mentioned above, Plaintiff had a positive  
13 bilateral Tinel's test both in January 2016 and August 2016, and on this latter date  
14 Plaintiff also had decreased sensation to pinprick and light touch in the median  
15 nerve distribution of both hands and a positive Phalen's test.<sup>50</sup> Likewise, in April  
16

---

17 <sup>46</sup> AR 31.

18 <sup>47</sup> See *Lingenfelter*, 504 F.3d at 1042 (recognizing that the ALJ is to consider the  
19 consistency of the medical opinion with the record as a whole).

20 <sup>48</sup> AR 31.

21 <sup>49</sup> AR 23, 27, & 32.

22 <sup>50</sup> AR 351-52 & 367.  
23

1 2015, Plaintiff sought treatment for pain in her wrists, was observed with  
2 tenderness in her right and left wrists, was diagnosed with carpal tunnel  
3 syndrome, and was referred to an orthopedic.<sup>51</sup> The ALJ fails to adequately explain  
4 why the observed symptoms and treatment related to the diagnosed carpal tunnel  
5 syndrome are inconsistent with Dr. Drenguis' occasional-manipulation opinion,  
6 particularly as Dr. Drenguis reviewed the January 2016 record and was aware of  
7 the level of treatment directed by the provider. Moreover, surgery had been  
8 recommended for her carpal tunnel syndrome, but Plaintiff lacked the insurance  
9 and financial resources to pay for the recommended surgery.

10 Other records cited by the ALJ were September 2017, May 2018, and August  
11 2018 treatment records related to visits for Plaintiff's restless leg syndrome,  
12 anxiety, and hip, neck, and back pain.<sup>52</sup> These medical records were not related to  
13 Plaintiff's carpal tunnel syndrome and post-dated the recommendation that  
14 Plaintiff receive surgery to alleviate her carpal tunnel syndrome—an option she  
15 could not afford. Accordingly, on this record, the cited records in other portions of  
16 the ALJ's decision do not provide substantial evidence to support the ALJ's bare-  
17 bones finding that Dr. Drenguis' occasional-manipulation limitation was  
18 inconsistent with the longitudinal record.

---

21 <sup>51</sup> AR 315-16.

22 <sup>52</sup> AR 441-43 & 448-53.

1           Moreover, each of the physicians or the PA-C offering a medical opinion as to  
2 Plaintiff's manipulation abilities limited Plaintiff to occasional handling and  
3 fingering.<sup>53</sup> Dr. Guillermo Rubio reviewed the record in September 2016 and  
4 limited Plaintiff to occasional bilateral handling and fingering.<sup>54</sup> Likewise, Dr.  
5 Howard Platter reviewed the record in November 2016 and limited Plaintiff to  
6 occasional bilateral handling and fingering.<sup>55</sup> And in September 2018, Plaintiff's  
7 treating provider, Dillon Burton, PA-C, limited Plaintiff to occasional use of both  
8 upper extremities.<sup>56</sup> "[W]hile an [ALJ] is free to . . . choose between properly  
9 submitted medical opinions, he is not free to set his own expertise against that of"  
10 the unanimous medical opinions without specific and cogent reasons supported by  
11 substantial evidence.<sup>57</sup> Here, the ALJ improperly relied on his interpretation of the  
12

---

13 <sup>53</sup> POMS DI 24503.025(E)(1) ("Consistency means the extent a medical opinion is  
14 consistent with the evidence from other medical and nonmedical sources. . . . The  
15 more consistent a medical opinion or prior administrative medical finding is with  
16 the evidence from other medical and nonmedical sources in the claim, the more  
17 persuasive the medical opinion or prior administrative medical finding.").

18 <sup>54</sup> AR 94-101.

19 <sup>55</sup> AR 103-17.

20 <sup>56</sup> AR 489-91.

21 <sup>57</sup> *McBrayer v. Sec'y of Health & Human Servs.*, 712 F.2d 795, 799 (2d Cir. 1983);

22 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998); *Lester*, 81 F.3d at 830.  
23

1 medical records without cogently explaining how substantial evidence supports his  
2 frequent-manipulation limitation, rather than the occasional-manipulation  
3 limitation opined by the three physicians and one PA-C offering that opinion after  
4 reviewing the same testing and/or treating records.<sup>58</sup>

5 Finally, the ALJ discounted Dr. Drenguis' occasional-manipulation  
6 limitation because it was inconsistent with Plaintiff's activities. An ALJ may  
7 discount a medical opinion that is inconsistent with the claimant's level of activity,  
8 yet "many home activities are not easily transferable to what may be the more  
9 grueling environment of the workplace."<sup>59</sup> Here, the ALJ highlighted that Plaintiff  
10 "can manage her daily personal care/hygiene, and prepare meals including cutting  
11 meat and using utensils, as well as doing household chores with breaks, taking  
12

---

13 <sup>58</sup> *Tackett v. Apfel*, 180 F.3d 1094, 1102-03 (9th Cir. 1999) (holding an ALJ erred in  
14 rejecting physicians' opinions and rendering his own medical opinion); *Lambert v.*  
15 *Berryhill*, 896 F.3d 768, 774 (7th Cir. 2018) ("ALJs must rely on expert opinions  
16 instead of determining the significance of particular medical findings  
17 themselves."); *Gonzalez Perez v. Sec'y of Health & Human Servs.*, 812 F.2d 747, 749  
18 (1st Cir. 1987) ("The ALJ may not substitute his own layman's opinion for the  
19 findings and opinion of a physician."); Soc. Sec. Disability Law & Proc. in Fed.  
20 Court, Substitution of own opinion for that of physician, § 6:24 (2020).

21 <sup>59</sup> *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001); *Fair v. Bowen*, 885 F.2d  
22 597, 603 (9th Cir. 1989).



1 stairs, driving, and grocery shopping using a push cart” and care for her dogs.<sup>60</sup> In  
2 another portion of the ALJ’s decision, the ALJ mentioned that Plaintiff’s hobbies  
3 included crocheting, cake decorating, and gardening.<sup>61</sup> While these hobbies and  
4 activities include the use of Plaintiff’s hands, the ALJ did not identify how these  
5 hobbies and activities, which can be done on an intermittent and sporadic basis,  
6 are inconsistent with Plaintiff’s need to be limited to occasional handling and  
7 fingering at a full-time work position. Moreover, Dr. Drenguis was aware that  
8 Plaintiff crocheted, took care of her daily personal needs, cut meat, fed herself,  
9 drove, grocery shopped, washed dishes, vacuumed, swept, and did laundry.  
10 Nonetheless, Dr. Drenguis—like the two reviewing physicians and the PA-C who  
11 offered a manipulation opinion—limited Plaintiff to occasional manipulation.  
12 Accordingly, on this record, the ALJ’s finding that Dr. Drenguis’ occasional-  
13 manipulation opinion was inconsistent with Plaintiff’s activities is not supported  
14 by substantial evidence.

15 The ALJ’s decision to discount the occasional-manipulation opinion of Dr.  
16 Drenguis—and each of the reviewing physicians and the PA-C providing an opinion  
17 in that regard—was harmful. The vocational expert testified that if Plaintiff was  
18 limited to occasional handling and fingering there were *no* jobs available in the  
19

---

20  
21 <sup>60</sup> AR 28 & 31.

22 <sup>61</sup> AR 25.  
23

1 national economy, given Plaintiff's other exertional and non-exertional  
2 limitations.<sup>62</sup>

3         Notwithstanding the vocational expert's testimony, the Commissioner  
4 argues that there is serious doubt as to whether Plaintiff is in fact limited to  
5 occasional handling and fingering because she did not complain of carpal tunnel  
6 syndrome in either her May 2016 disability application or June 2016 function  
7 report and Plaintiff's carpal tunnel syndrome can be controlled effectively with  
8 treatment.<sup>63</sup> The Commissioner is correct that Plaintiff did not list carpal tunnel as  
9 a disabling impairment on her application or identify that the use of her hands was  
10 effected on her function report. Regardless of what information is contained on the  
11 application or function report, the ALJ must consider a claimant's functional  
12 limitations arising from all severe impairments.<sup>64</sup> In making this assessment, the  
13 ALJ is to consider *all* of the evidence in the case record.<sup>65</sup> As mentioned above, the  
14 ALJ considered treatment records about Plaintiff's carpal tunnel as well as the four  
15

---

16 <sup>62</sup> AR 83.

17 <sup>63</sup> ECF No. 12 at 12 (citing AR 211, 234, 64, 345, 372, 361, 368, 396, 405, & 412).

18 <sup>64</sup> "[T]he ALJ is responsible for translating and incorporating clinical findings into  
19 a succinct RFC." *Rounds v. Comm'r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir.  
20 2015).

21 <sup>65</sup> 20 C.F.R. 404.1520(a)(3) & 404.1512(a)(1) ("We will consider only impairment(s)  
22 you say you have *or about which we receive evidence*." (emphasis added)).  
23

1 medical opinions that discussed Plaintiff's carpal tunnel and resulting  
2 manipulation limitations. In addition, at the administrative hearing, Plaintiff  
3 testified that she experienced hand numbness and pain and that when engaging in  
4 activities that affected her carpal tunnel she did so in "spurts."<sup>66</sup> The ALJ found  
5 Plaintiff's carpal tunnel to be a severe impairment and agreed that Plaintiff was  
6 functionally limited by her carpal tunnel. But instead of accepting the unanimous  
7 occasional-manipulation opinion offered by each of the medical physicians and PA-  
8 C, the ALJ limited Plaintiff to frequent handling and fingering. On this record,  
9 that Plaintiff did not list a hand-related impairment on her disability application  
10 or function report does not create serious doubt that Plaintiff was limited to  
11 occasional manipulation.

12 Second, the Commissioner argues that there is serious doubt as to whether  
13 Plaintiff is limited to occasional manipulation because Plaintiff's carpal tunnel can  
14 be controlled effectively with treatment and therefore it cannot be considered a  
15 disabling impairment. The Commissioner cites no evidence that Plaintiff's carpal  
16 tunnel is controlled effectively with the conservative treatment employed thus far,  
17 namely splints, medication, and stretching exercises. In fact, the medical evidence  
18 reflects otherwise, i.e., that Plaintiff continued to have positive Tinel's and/or  
19 Phalen's tests with decreased sensation. And Plaintiff testified, consistent with  
20 similar notations in the medical record, that she did not have insurance coverage  
21

---

22 <sup>66</sup> AR 64-65 & 68.  
23

1 or other financial means to pay for the recommended carpal tunnel surgery.<sup>67</sup> The  
2 ALJ did not make any findings contrary to this testimony, and the Commissioner  
3 did not present evidence contrary to this testimony. Moreover, notwithstanding the  
4 conservative treatment, the three physicians and one PA-C who offered an opinion  
5 as to Plaintiff's functional limitations resulting from her carpal tunnel all opined  
6 that she is limited to occasional manipulation.

7 In summary, the ALJ erred, and his error was consequential.

8 **B. Other Challenges**

9 Because the ALJ harmfully erred by discounting the occasional-  
10 manipulation limitation opined by Dr. Drenguis, Dr. Rubio, Dr. Platter, and PA-C  
11 Burton, and because there were no step-four or step-five jobs that Plaintiff could  
12 perform given all of her exertional and non-exertional limitations, the Court need  
13 not address Plaintiff's other challenges

14 **C. Remand: A remand for award of benefits is appropriate.**

15 Plaintiff submits a remand for payment of benefits is warranted. Because  
16 the Court finds that the ALJ improperly weighed the medical evidence, the Court  
17 has discretion as to whether to remand for further proceedings or for benefits.<sup>68</sup>  
18 Where no useful purpose would be served by further administrative proceedings, or  
19

---

20 <sup>67</sup> AR 51-52, 60, 62, 69, 327-28, 350, 354, 365, 405, 441, & 449.

21 <sup>68</sup> See *Harman v. Apfel*, 211 F.3d 1172, 1175-78 (9th Cir. 2000); *Sprague v. Bowen*,  
22 812 F.2d 1226, 1232 (9th Cir. 1987).  
23

1 where the record has been fully developed, it is appropriate to direct an immediate  
2 award of benefits.<sup>69</sup>

3 There is no serious doubt that Plaintiff is disabled when the agreed-upon  
4 occasional-manipulation limitation is credited.<sup>70</sup> Plaintiff's carpal tunnel symptoms  
5 were observed in April 2015, confirmed in January 2016 with a positive bilateral  
6 Tinel's test, and again observed in August 2016.<sup>71</sup> The record is fully developed,  
7 and further administrative proceedings will serve no useful purpose given the  
8 vocational expert's testimony that there were no available jobs if Plaintiff was  
9 limited to occasional manipulation.<sup>72</sup> Remand for payment of immediate benefits  
10 from Plaintiff's alleged onset date of November 1, 2015, is warranted.

## 11 V. Conclusion

12 Accordingly, **IT IS HEREBY ORDERED:**

- 13 1. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is  
14 **GRANTED.**
- 15 2. The Commissioner's Motion for Summary Judgment, **ECF No. 12**, is  
16 **DENIED.**

---

17  
18 <sup>69</sup> *Harmon*, 211 F.3d at 1179 (noting that "the decision of whether to remand for  
19 further proceedings turns upon the likely utility of such proceedings").

20 <sup>70</sup> *Garrison*, 759 F.3d at 1020.

21 <sup>71</sup> AR 314-16, 350, & 364-69.

22 <sup>72</sup> *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004).  
23

1           3.     The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff  
2                 REVERSING and REMANDING the matter to the Commissioner of  
3                 Social Security for immediate calculation and award of benefits.

4           4.     The case shall be **CLOSED**.

5           **IT IS SO ORDERED.** The Clerk's Office is directed to file this Order and  
6     provide copies to all counsel.

7           **DATED** this 6<sup>th</sup> day of October 2020.

8  
9                                 s/Edward F. Shea  
10                                EDWARD F. SHEA  
                              Senior United States District Judge